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IN THE COURT OF
COURT OF CRIMINAL APPEALS
4/18/2017
CRIMINAL APPEALS
OF TEXAS

CLINTON DAVID BECK

STATE'S LETTER OF AN ADDITIONAL AUTHORITY

TO THE HONORABLE JUDGES OF SAID COURT:

Now comes the State of Texas, Appellee in the above-styled and -numbered cause, and submits this *Letter of an Additional Authority* to the Court, and would show unto the Court as follows:

This month an intermediate appellate court addressed a challenge to section 21.12(a)(1) of the Penal Code; throughout the opinion, the court emphasized several legitimate state interests and concerns which could also be relevant to the Court's decision in the instant case. Below are a few excerpts:

[The defendant] worked as the girls' varsity soccer coach at a high school in Harris County, Texas. That fall, [the defendant] began texting with a 17-year-old student who was a high school senior on the soccer team "in a flirty way." Their communications led to clandestine hotel encounters and an intimate sexual relationship.

JUAN SERGIO CARREON TOLEDO, Appellant V. THE STATE OF TEXAS, Appellee, 01-15-00559-CR, 2017 WL 1281437, at *1 (Tex. App.—Houston [1st Dist.] Apr. 6, 2017, no. pet. h.).

[The defendant] perceived the relationship with the student as consensual, but acknowledged understanding "how this incident can have a negative effect on a young girl." The student stated that [the defendant] made her "feel that the only way I'd continue to get his

help with college recruitment and continue to be the star player and get play[ing] time was to keep doing sexual things with him.”

The student’s father testified at the punishment hearing about the adverse effect the relationship with [the defendant] had on the student: other students mocked her, and the student quit the soccer team to avoid taunts from other players and their parents during matches. The student stopped attending school for a period of time to avoid the harassment. She provided a statement for the PSI report in which she detailed her struggles with suicidal thoughts that led her to seek psychiatric treatment.

Id. at *1–2.

... the Supreme Court [in *Lawrence*] recognized that the liberty interest that it recognized did not extend to sexual conduct involving prostitution, minors, or—important to this case—“persons who might be injured or coerced or who are situated in relationships where consent might not be easily refused.”

Id. at *3.

Texas has a rational interest in prohibiting sexual conduct between teachers in its primary and secondary schools and the students in their schools. ***First, the power imbalance inherent in a teacher-student relationship makes a student susceptible to coercion and unable to easily refuse an educator’s implicit or explicit demands.*** See *Lawrence*, 539 U.S. at 578, 123 S. Ct. at 2484. This power imbalance is present in secondary schools whether the student is sixteen, seventeen, or eighteen. Attendance generally is compulsory for students enrolled in high school. See TEX. EDUC. CODE ANN. §§ 25.085, 25.086 (West 2012 & Supp. 2016). After arriving at school, students must spend the day on campus unless they have permission to be elsewhere. See *id.* § 25.087 (West Supp. 2016). ***“If employees in positions of authority enter into sexual relationships with students that they teach, coach, counsel, etc. on a regular basis; mental or physical harm to the student as the result of the relationship is almost guaranteed.”*** Elkins, Paul, *Text But Don’t Touch: Making [Non]sense of Texas Teacher-Student Relationships*, 1 TEX. A. & M. LAW REV. 703, 723 (2014). ***The record shows that the sexualized***

power dynamic adversely affected the student in this case: she withdrew from school for a period, suffered from suicidal thoughts, and required psychiatric treatment.

Second, the state has a legitimate interest in preserving an educational environment conducive to learning. See *Ex parte Morales*, 212 S.W.3d 483, 496–98 (Tex. App.—Austin 2006, pet. ref'd). Educators and students, as well as those who pay for a school's operations, are entitled to preserve an environment where learning is paramount and the distractions of a sexually charged atmosphere—affecting students both under and over the age of consent—are not tolerated. ***The record in this case exemplifies the problems that can arise when other students are exposed to a teacher-student relationship. The student told some of her friends about her relationship with [the defendant], and [the defendant] behaved inappropriately toward the student in a manner that some of the other students noticed. Ultimately, the student victim became an object of ridicule among her peers, quit soccer after 10 years of playing it, had suicidal thoughts, and sought psychiatric counseling.***

Id. at *4 (emphasis added).

The *Morales* court concluded that educator-student relationships like the one before it fall on the other side of the line drawn in *Lawrence*. *Id.* at 495–96. It observed that school employees are vested with trust by the school, parents, and public, and that the legislature has a ***legitimate interest in preserving that trust by imposing a blanket prohibition to keep school employees from “misusing their access to students as a conduit for sex.”*** *Id.* at 496; accord *Berkovsky v. State*, 209 S.W.3d 252, 253 (Tex. App.—Waco 2006, pet. ref'd); see also *In re Shaw*, 204 S.W.3d 9, 18 (Tex. App.—Texarkana 2006, pet. ref'd) (holding that applicant was not entitled to relief from prosecution under section 21.12 on due process or equal protection grounds because state has ***legitimate interest in protecting “students ...—even those of age—from the pressures, emotional strain, conflicts, distractions, and other difficulties brought on by sexual conduct with persons, not their spouse, employed at the students’ schools”***).

Texas has rational reasons for enacting and enforcing section 21.12: to protect primary and secondary students in its educational system from

the sexual advances of teachers and to preserve and foster a safe atmosphere conducive to learning. *The problem the statute aims to address is significant—Texas “reportedly leads the nation in teacher-student sexual assaults.”* Hon. Greg Abbott, Governor of Texas, State of the State Address (Jan. 31, 2017).

Id. at *4 (emphasis added).

The evidence presented during punishment showed that [the defendant’s] conduct caused the student substantial harm. The student believed that she had to continue the relationship with [the defendant] to receive playing time on the varsity soccer team and his assistance in obtaining a soccer scholarship. She was suspended based on [the defendant’s] accusation that she was lying about their relationship and her “self-image was shattered from the names and talk at school.” She no longer played soccer. The student’s emotional pain caused her to contemplate suicide and led her to seek counseling.

Id. at *7.

Because the Court may find the forgoing recent decision and conclusions therein relevant to its own decision in the instant case, the State respectfully submits this *Letter of an Additional Authority*.

Respectfully submitted,

/s/ Joshua D. Presley

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CERTIFICATE OF SERVICE

I, Joshua D. Presley, Assistant Criminal District Attorney for the State of Texas, Appellee, hereby certify that a true and correct copy of this *State's Letter of an Additional Authority* has been delivered to Appellant CLINTON DAVID BECK's attorneys in this matter:

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By electronically sending it to the above-listed email addresses through efile.txcourts.gov, this 18th day of April, 2017.

/s/ Joshua D. Presley
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